IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 612 of 2002
in
SPECIAL CIVIL APPLICATION No 4349 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE LAND DEVELOP CORPORATION LTD.
Versus
SOMPURA DHARMEDNRA HATHI C/O SD RATHOD

Appearance:
1. LETTERS PATENT APPEAL No. 612 of 2002
MR HS MUNSHAW for Appellant No.
MR KISHOR M PAUL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 15/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The respondent-workman was employed as Rojamdar on the daily-wage of Rs.13 per day in 1987. He continuously worked for 240 days in one calender year, but thereafter, all of a sudden by an oral order dated 1.4.1988 his services were terminated. He, therefore, approached the Labour Court, Bhuj-Kutch by way of Reference No.1490/88. The Labour Court, after appreciating the evidence on record, came to the conclusion that the service of the respondent-workman was terminated in clear violation of Section 25-F of the Industrial Disputes Act (for short "the Act"), therefore, quashed and set aside the termination order and directed the appellant to reinstate him in service with 30% back wages. This was challenged by the appellant-Corporation by way of Special Civil Application No.4349 of 2001 before this court, which was partly allowed by the learned Single Judge and the order of back wages passed by the Labour Court was quashed and set aside as learned counsel Mr.Paul for the respondent-workman conceded that the workman was more interested in job than back wages. This part of the judgment and order passed by the leaned Single Judge confirming reinstatement order passed by the Labour Court is challenged in this Letters Patent Appeal by the Appellant-Corporation.

#. Mr.Munshaw, learned counsel for the appellant vehemently submitted that the respondent workman was appointed on a particular project, which was closed on 1.4.1988, therefore, his services were terminated. Thus, there was no question of reinstating him in service submitted that both the LabourCourt as well as the learned Single Judge of this court committed grave error in ordering reinstatement of the respondent-workman. We are afraid that this submission of Mr.Munshaw cannot be accepted for the simple reason that such a plea was never taken before the LabourCourt. Mr.Munshaw made an attempt to convince us from the award passed by the Labour Court that such a plea was taken by him before the labour court but having carefully gone through the award passed by the Labour Court, we do not find a whisper in the award passed by the Labour Court that such a plea was taken that he was employed on a particular project and not in the service of the Corporation. Similarly, before the learned Single Judge in the writ petition though detailed affidavit was filed in the petition, this specific contention was never raised. We had repeatedly asked Mr.Munshaw to produce such order, if any, passed by the

appellant-Corporation appointing respondent-workman on a particular project, but he failed to produce on the ground that it is an oral order. What was contended before the learned Single Judge was that Labour Court had not appreciated that scheme or project was over, therefore, his services were terminated, but it was not their case that workman was appointed on the project or scheme.

#. Mr.Munshaw then contended that the appellant-Corporation, after closing down the project shifted its regular employees to the other projects, but the respondent-workman was appointed as Rojamdar on daily wage basis, therefore, there is no question of his reinstatement in service and shifting to any project. In the reply affidavit filed before the learned Single Judge in the writ petition it was pointed out by the respondent-workman that as many as 15 employees right from Deputy Director to Junior Clerk and Peon-cum-Driver were accommodated in different offices, after the project was closed. It was also specifically contended by the respondent-workman in the reference filed before the Labour Court that after terminating his service, his juniors were continued in service. Not only that new appointments were also made. However, in the rejoinder it was stated by the Corporation that all of them were regular employees and none of them was daily wager or irregularly appointed employee. Therefore, it was submitted that the case of the respondent-workman cannot be equated with them. This submission of Mr.Munshaw, learned counsel for the appellant-Corporation does not lie good. It was never the case of the appellant-Corporation either before Labour Court or before the learned Single Judge of this court in the writ petition that the appointment of the respondent-workman was made illegally or irregularly. We are of the considered opinion that there cannot be any difference between regular employee and Rojamdar appointed on daily wages for this purpose. The Corporation has to accommodate the respondent workman in their any other office as it has done in case of its regular appointees. When the Labour Court found his termination illegal and ordered reinstatement, the appellant-Corporation was duty bound to comply with the same and it cannot shirk his responsibility by submitting that the project on which the respondent-workman was appointed was closed down long back.

#. In view of the above discussion, this appeal fails and is dismissed with special costs of Rs.2,000/=. The interim relief against the reinstatement granted by this

court on Civil Application stands vacated forthwith. The appellant-Corporation is now directed to comply with the order of reinstatement passed by the Labour Court and confirmed in writ petition by the learned Single Judge as early as possible and not later than 1.12.2003.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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